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SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. YAMADA (Japan)

(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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Mr. Yamada (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/49/10 and A/49/335; A/51/275 and Corr.1 and Add.1)

Clusters I (articles 1, 3 and 4) and II (articles 5-10) (continued)

1. The CHAIRMAN said that, without prejudging the positions of delegations, he intended to transmit the draft articles in cluster I, together with his assessment of the general trends that had emerged during the discussion on them, to the Drafting Committee so that it could begin its work as soon as possible. He invited delegations to make any comments they might wish the Committee to take into account.

2. Mr. YIMER (Ethiopia) said that the question of the relationship between the convention and existing agreements should not be considered in the context of cluster I, but should be taken up by the Drafting Committee when it prepared the set of final clauses, in accordance with General Assembly resolution 49/52.

3. Mr. PAZARCI (Turkey) said that, despite his reservations, he could accept the proposed working method. However, he wished to reiterate his delegation's view that the Working Group was the appropriate forum for dealing with fundamental questions.

4. Mr. PRANDLER (Hungary) said that the Working Group could not be expected to agree on every detail and send a finished text to the Drafting Committee; its task was to identify the major issues and sticking points and thus enable the Drafting Committee to carry out its work. The draft articles had to be seen as a total package, since experience had shown that nothing was agreed until everything was agreed. He therefore supported the suggestion made by the Chairman.

5. Mr. LALLIOT (France) said that the action suggested by the Chairman did not reflect the opinions expressed in the debate. As far as he could tell, no general trends could be discerned and any supposed consensus was false. The Working Group must take the time to listen to divergent views, especially on the problematic articles 3, 5 and 7, which were at the very heart of the draft. To rush matters would only lead to an unsatisfactory final text which most delegations would be unable to accept.

6. The division of tasks between the Working Group and the Drafting Committee was quite clear; the former was to establish general principles and the latter to concentrate on drafting. His Government insisted that its position on articles 1 and 3 should be taken into account. To delete difficult articles or postpone their consideration was merely to store up problems for later. The Working Group should reach a consensus on those articles before sending anything to the Drafting Committee.

7. Mrs. ESCARAMEIA (Portugal) agreed with the Chairman's suggestion that the articles in cluster I should be sent to the Drafting Committee and that informal consultations should be held on cluster II. The articles in cluster I had been exhaustively discussed, both in the Working Group and in informal consultations. Notwithstanding the reservations expressed by one delegation, there was no reason to defer transmitting the articles and comments on them to the Drafting Committee, especially as the latter had a specific mandate which was spelt out in General Assembly resolution 49/52.

8. As far as cluster II was concerned, she supported the Chairman's suggestion that informal one-to-one consultations on articles 5 and 6 should be conducted by the delegation of the United States of America, and on article 7 by the Canadian delegation. She suggested that the Chairman himself should coordinate the follow-up talks on cluster II.

9. The CHAIRMAN emphasized that the discussions conducted by the United States and Canada would be informal ones to explore whether some form of consensus could be reached. They would then be followed by more formal talks, along the lines of the consultations conducted by the representative of Brazil on cluster I.

10. Mr. MORSHED (Bangladesh) agreed with the representative of Hungary that the draft articles constituted a sort of "package deal" representing a hard-won compromise that should not be unravelled. His delegation thus supported the working procedure suggested by the Chairman, which would safeguard the integrity of that package.

11. Mr. AKBAR (Pakistan) said that his delegation also supported the methodological approach to cluster I suggested by the Chairman. However, as the representative of France had rightly pointed out, the Working Group must guard against forcing a spurious consensus; there was still plenty of time in which to thrash out the very serious issues involved in cluster I, and particularly in article 3. For its own part, his delegation would find it extremely difficult to modify its previously stated position on that cluster.

12. Mr. ŠMEJKAL (Czech Republic) said that his delegation continued to have difficulties with cluster I, and particularly with article 3. There was still time for further substantive consideration of the cluster, and it would be premature to send it to the Drafting Committee at present.

13. Mr. VARSO (Slovakia) said that, while he appreciated the Chairman's efforts to expedite matters, he had some reservations regarding that approach. Problems persisted as to the relationship between the Working Group and the Drafting Committee. It was essential to determine the difference between the two and to decide on their respective roles.

14. In his delegation's view, there was still no consensus on the substance of the articles of cluster I. He had not been able to discern any dominant trend with regard to issues such as the qualification of harm; there did not even seem to be agreement on the scope of the convention. A balance must be struck between rights and obligations of upstream and downstream States if consensus was to be achieved. Those were not drafting matters, but substantive questions, solutions to which must be found in the Working Group. Only when there was consensus on the substance should the articles be referred to the Drafting Committee.

15. Miss BARRETT (United Kingdom) expressed appreciation for the Chairman's efforts to make the best possible use of the three weeks available. Nevertheless it must be borne in mind that the Working Group and the Drafting Committee had different roles: the role of the latter was a technical one, and representatives were right to caution against using it as a means of imposing a false consensus.

16. After a first reading of clusters I and II, the Working Group must now address the task of negotiating a text, not an easy matter when there were some 28 proposed versions. The Drafting Committee could thus perform the technical task of consolidating those texts. If a clear minority view existed, it could perhaps be reflected by placing text in brackets, it being understood that the Drafting Committee's text represented a general trend, not a consensus. If the Working Group was divided on a question of substance, the Drafting Committee could perhaps draft alternative versions. The Working Group would then be able to choose between two or three, rather than 28, options. Her delegation thus supported the Chairman's proposal to refer the articles to the Drafting Committee as soon as possible.

17. Ms. MEKHEMAR (Egypt) said that delegations had made their positions clear but that agreement still had not been reached on cluster I. Time was still available for further consultations to facilitate the eventual task of the Drafting Committee. Furthermore, her delegation had reservations concerning the very informal consultations to be held on cluster II, which were to be conducted on a one-to-one basis. Consultations should take place in the presence of all delegations.

18. The CHAIRMAN confirmed that consultations on cluster II would take place in the presence of all delegations.

19. Mr. NGUYEN DUY CHIEN (Viet Nam) agreed that, although the Working Group had not reached consensus on many issues it was not yet faced with serious time constraints. In his delegations's view, however, there was no need to wait until consensus had been achieved before referring the articles to the Drafting Committee. It should already be possible to refer articles 1, 3 and 4 to that Committee, which might then consider them and propose two or three alternative versions for subsequent considerations by the Working Group, without prejudice to the right of delegations to make further contributions or observations.

20. Mr. TANZI (Italy) said that his delegation supported the Chairman's procedural proposal, especially with regard to cluster I. While some delegations had expressed opposition to that proposal, he did not believe that

their positions differed to any great extent. In his delegation's view, the Chairman's procedural proposal would serve the interests of all delegations.

21. Mrs. DASKALOPOULOU LIVADA (Greece) said that her delegation saw no difficulty in sending cluster I to the Drafting Committee. Unlike some delegations, it believed that overall tendencies were already clearly discernible. The Drafting Committee could now formulate alternative or bracketed texts on which a final consensus decision could then be taken by the Working Group. Meanwhile, preliminary work could be done on cluster II in informal consultations. That cluster could then also be referred to the Drafting Committee.

22. The CHAIRMAN said that the Working Group had devoted considerable time to the question of procedure. It was now in a position to refer articles 1, 3 and 4 to the Drafting Committee.

The meeting rose at 11.15 a.m.